IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1765 OF 2005

IN

SUIT NO.1575 OF 2005

...

Shri Vishnuprasad Shankarbhai
Patel and another ...Plaintiffs

v/s.

Harilal Shankarbhai Patel ...Defendant

...

Mr.Dilip Bagwe for the Plaintiffs.

Mr.Shekhar Shetye with Mr.Amin i/b B.Amin & Co. for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 8TH MARCH,2007

P.C.:

1. This notice of motion is taken out by the Plaintiffs. The Plaintiffs have filed this suit claiming a decree of declaration that the Deed of

Confirmation dated 1st March, 2004 is illegal. Further claiming a decree that the Deed of Release dated 28th July, 1992 is also illegal and unenforceable in law. The Plaintiff also claims a decree of declaration the the Plaintiff have 1/3rd share each in the property described in Exh.A and that the Defendant has also 1/3rd share in that property. The Plaintiff is also claiming a decree of partition and separate possession.

2. It is an admitted position that the two Plaintiffs and the Defendant are the real brothers. By the conveyance dated 10th September, 1954 the property was purchased. As per that conveyance the mother of the parties namely Smt.Surajbai Shankarbhai Patel was to hold the property having life interest in the property and after her death the property was to be inherited by three sons namely two Plaintiffs and the Defendant in equal share.

3. According to the Plaintiffs, the mother has died in January, 1993. According to the Plaintiffs thus they have 1/3rd share each in the suit property. According to the Plaintiffs they came across a notice issued by the Defendant which showed that the

Defendant was claiming to be the sole owner of the property on the basis of allege released deed dated 28th July, 1992, which is supposed to have been executed by the Plaintiffs in his favour. According to the Plaintiffs, it also came to their knowledge that the Defendant himself executed a deed of confirmation on 1st March, 2004 before the Registrar of documents in relation to the release deed dated 28th July, 1992. The case of the Plaintiffs in short is that they have never executed any Release Deed in favour of the Defendants. The deed of release claimed by the Defendant is forged and fabricated document. In any case, as the release deed is a compulsorily registerable document, and as it is admittedly not registered, their title in the immovable property which is the suit property does not get conveyed to the Defendant and therefore the Defendant cannot claim to be the sole owner of the property. Therefore, they are seeking temporary injunction restraining the Defendants from transferring their share in the property during the pendency of the suit.

4. The defendant does not dispute that the release deed is not registered. It was also not argued

before me that as a result of deed of confirmation which is registered, the release deed gets registered. Relying on the judgments, two of the Supreme Court and one of this court, in the case of Kale and ors. v/s. Deputy Director of Consolidation and ors, AIR 1976 SC 807, Ram Charan Das v/s. Girja Nandini Devi and ors, AIR 1966 SC 323, and in the case of Smt.P.N.Wankudre v/s. C.S. Wankudre and ors, AIR 2002 Bombay 129, it is contended that though the deed of release is not registered, estoppel will operate against the Plaintiffs from disowning the deed of release because they have accepted that they have signed the deed of release.

5. I have heard the learned Counsel for the Plaintiffs and the Defendant. It is clear from the conveyance dated 10th September, 1954 that the property was purchased in favour of the Plaintiffs and the Defendant, only life interest was created in favour of the mother. Therefore, prima facie, it appears that the property was owned by the three brothers in equal share. The property being immoveable property, therefore, a deed of release which has result of transferring the shares of the Plaintiffs in favour of the Defendant in view of the

provisions of Section 17 of the Registration Act will be a compulsorily registerable document. Therefore, even if, it is assumed that the release deed is a genuine document, in the absence of registration, title of the Plaintiff in the immoveble property will not stand transferred to the Defendant. Therefore, the Defendant can not claim to be the sole owner of the property. The question whether because according to the Defendant, the Plaintiffs have signed the release deed, estoppel will operate against them or not is question to be considered in the facts and circumstances of the case. It is only after the Defendant first succeeds in proving that the Plaintiffs have signed that deed and that the Plaintiffs have acted on that deed that the question of operation of estoppel against the Plaintiffs would arise. But, in any case, at this stage one thing appears to be definite that in the absence of registration of the release deed the Defendant does not become the sole owner of the property. In my opinion, the conduct of the Defendant of registering the deed of confirmation in the year 2004 in relation to the release deed strongly suggests that the released deed is a forged and fabricated document. Had that deed been really signed by the Plaintiffs

and been accepted by the Plaintiffs, the normal reaction of any person on realising that the document is compulsorily registerable is to call upon his brothers to co.operate with him in getting the deed registered. The conduct of the Defendant of executing the deed of confirmation without intimating the Plaintiffs and without calling upon them to co.operate with him indicates that the document of release was never signed by the Plaintiffs. Though, admittedly the deed of confirmation has been registered in 2004 in relation to the release deed, it has not been explained why that deed was registered in 2004. It was suggested that because son of one of the Plaintiffs has filed an affidavit somewhere saying that his father has signed the document of release, the court should draw an inference that the document is genuine. In my opinion, unless and until the Defendant explains in what situation the statement was made by the son of the Plaintiff, what is the nature of the relationship between the Plaintiff and his son an inference cannot be drawn on the basis of mere statement alleged to have been made by son of one of the Plaintiffs. Then it was suggested that because the persons who had signed the document of retirement as witness in 1992

have also signed the deed of release an inference should be drawn that the deed of release is genuine. In my opinion, no such inference can be drawn at this stage without the Defendant examining those persons as witnesses and the Court being satisfied about the reliability of those persons. I was informed that one of them has expired, but if the Defendant wanted the court to believe that deed of release was actually signed by those witnesses, it was possible for the Defendant to file affidavit of atlease one living witness. But the Defendant for reason best known to him has not filed any affidavit of the witnesses. Therefore, without filing their affidavits, the Defendant in my opinion, cannot ask the court to draw an inference about the genuineness of the deed only from the names shown on the deed of release.

6. Taking any view of the matter, therefore, it appears that the Defendant has created a document of release to deprive his brothers of their shares in the property and therefore as the Plaintiffs have made out a very strong prima facie case and as aspect of balance of convenience and irreparable injury is also in favour of the Plaintiffs, the Plaintiffs are

entitled to temporary injunction. If the order of temporary injunction is not made, the Defenant may tamper the property. Notice of motion is, therefore, granted in terms of prayer clause (b). Motion disposed of.

...